

1 THE HONORABLE RICHARD A. JONES
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

9 UNIVERSAL LIFE CHURCH
10 MONASTERY STOREHOUSE, a
Washington non-profit corporation,

11 Plaintiff,

12 vs.

13 MAURICE KING, LEWIS KING, GLEN
YOSHIOKA, DYLAN WALL, SARA
14 WHITE, and AMERICAN MARRIAGE
15 MINISTRIES, a Washington non-profit
corporation,

16 Defendants.

No. 2:19-CV-00301-RAJ

PLAINTIFF'S OPPOSITION TO
DEFENDANT MAURICE KING'S
MOTION FOR SUMMARY JUDGMENT

Date Noted: Fri., May 7, 2021

17 I. INTRODUCTION AND RELIEF REQUESTED

18 Plaintiff Universal Life Church Monastery Storehouse (“*ULC Monastery*”) respectfully
19 requests that the Court deny Defendant Maurice King’s Motion for Summary Judgment. Mr. King
20 submitted a declaration that he did not authorize or direct any of the false and defamatory content
21 at issue. Yet, Mr. King at all relevant times has been a director, officer, and general counsel of
22 Defendant AMM. His co-directors and officers testified Mr. King not only reviewed and approved
23 the content, but helped write some of it. AMM’s executive director also testified the fact that Mr.
24 King – as an AMM board member, officer, and general counsel – reviewed and approved the
25 content, without raising any objection of recall, “absolutely meant something.” This alone defeats
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1 Mr. King's questionable declaration and motion, by raising a genuine factual dispute as to Mr.
 2 King's role in writing, approving, and publishing the false and defamatory content at issue.

3 There is no dispute that the statements published on AMM's websites falsely attribute to
 4 ULC Monastery the legal challenges faced by the Universal Life Church, Inc. of Modesto,
 5 California" (the "*Modesto ULC*"). Yet Mr. King served as a board member and officer in the early
 6 inception of ULC Monastery, and fully knew that ULC Monastery was separate and distinct from,
 7 and publicly distinguished itself from, the Modesto ULC. As such, Mr. King was specifically and
 8 keenly aware that AMM's websites attributing the decades old legal troubles of the Modesto ULC
 9 (which occurred before ULC Monastery even existed) to ULC Monastery was false, deceptive,
 10 and misleading. Because of Mr. King's personal disregard for the truth, and personal involvement
 11 in the publication of these false and defamatory statements, he is personally liable.

13 II. PERTINENT FACTS

14 A. Inception of ULC Monastery – Mr. King As Director and Officer

15 ULC Monastery is a non-denominational church, formed in 2006, and operates an online
 16 marriage ministry allowing anyone who feels so called to be ordained free of charge. *ECR 116,*
 17 *pg. 1:2-4 (¶2-4)*. George Freeman was a principal in forming ULC Monastery, and prior to that
 18 was an officer of an Arizona entity which was affiliated with the original Universal Life Church
 19 in Modesto, as founded by Kirby Hensley (the "*Modesto ULC*" referenced above). The Arizona
 20 entity was founded and headed by Daniel Zimmerman. *See May 3 Galletch Decl. filed*
 21 *concurrently herewith, Ex. 1 (dep. pgs. 49:2-62:23)*.

23 While ULC Monastery is a "descendant" of the Modesto ULC, it makes clear that it
 24 "discarded the deceptive and illegal practices of the old Modesto ULC." *See* [Universal Life Church](http://Universal Life Church - About Us (themonastery.org))
 25 [- About Us \(themonastery.org\)](http://Universal Life Church - About Us (themonastery.org)). ULC Monastery was started specifically to separate from Mr.
 26 Zimmerman and the Modesto ULC. *Id., Ex. 1 (dep. pgs. 58:23-59:3)*. ULC Monastery states it is

1 located and headquartered in Seattle. *See* [Universal Life Church - About Us \(themonastery.org\)](http://Universal Life Church - About Us (themonastery.org)).

2 During ULC Monastery's early years, it had few employees. One was Maurice King, who worked

3 for ULC Monastery at its founding in 2006, served as employee, officer, and director, and stayed

4 involved until approximately October 2010. *ECR 116 (¶2-4); and May 3 Freeman Declaration*

5 *filed concurrently herewith, ¶3-5.* Other employees included Defendants Dylan Wall and Glen

6 Yoshioka, and Tryge Jones, who has worked for AMM for a number of years. *ECR 116, ¶5-8.*

7 **B. Formation of AMM – AMM's Two Offending Websites**

8 Defendants Glen Yoshioka and Dylan Wall formed AMM on July 4, 2009. AMM also

9 offers ordination. *Dckts. 27 and 28; and ECR #116, ¶3-4.* Maurice King is a board member,

10 officer, and general counsel for AMM. *See ECR 206 (¶2); May 3 Galletch Decl., Ex 2 (dep pgs.*

11 *109:25-110:6), Ex. 3 (dep. pgs. 12:3-12:21), Ex. 4 (dep. pg. 87:9-14), and Ex. 5, pg. 2.*

12 In "mid-to-late 2018," AMM created and published two websites about ULC Monastery,

13 one with the url of <https://amm-vs-ulc.com> (the "AMM-vs ULC Website"), and the other with the

14 url of <https://americanmarriageministrieslegal.com> (the "AMM Legal Website"). *See May 3*

15 *Galletch Decl., Ex. 2 (pgs. 131:21-132:8), and ECR 27 (Amnd. Complaint, ¶¶20-33).* A copy of

16 the content of each website is attached as Exs. 6-7, respectively, to the May 3 Galletch Decl. AMM

17 has admitted that the text and content in these copies is true and accurate (although the formatting

18 and visual layout may be different due to printing from a website). *See May 3 Galletch Decl., ¶8*

19 *and Ex. 6.*

20 ULC Monastery's Complaint centers around these two websites. AMM testified that it

21 aimed these sites directly at ULC Monastery. *May 3 Galletch Decl., Ex. 2 (dep pgs. 104:21-*

22 *105:22) and Ex. 3 (dep. pgs. 68:21-69:20).*

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1 1. The AMM-vs-ULC Website

2 The AMM-vs-ULC Website explicitly portrays itself as a side-by-side comparison between
 3 AMM and ULC Monastery. The site declares that AMM and ULC Monastery are the “two major
 4 organizations when it comes to online ordination,” and that AMM and ULC Monastery are “the
 5 two most established options.” *May 3 Galletch Decl.*, Ex. 6, pg. 2 -3. The focus of the website then
 6 is AMM’s “ side-by-side comparison” of these “two major,” “most established” options, i.e. a
 7 direct and deliberate comparison between AMM and ULC Monastery. *Id.*, pg. 3 (*middle of page*).
 8

9 Yet, the website does not compare AMM to ULC Monastery. Rather, the site proceeds to
 10 list various statements about the Modesto ULC, such as “being in and out the courtroom,” “had its
 11 IRS non-profit status revoked,” and “embroiled in fraud allegations.” *May 3 Galletch Decl.*, Ex. 6
 12 (pgs. 3-4). These statements are hyperlinked to other internet webpages, indicated by the blue
 13 coloring of the text. *See May 3 Goschie Decl. filed concurrently, ¶3-5 and exs. 1-5 thereto.* When
 14 clicked, each of the hyperlinks takes the user to another website containing information about the
 15 Modesto ULC: one to a 1985 4th Circuit decision out of North Carolina; one to a 1989 New York
 16 state court decision; two links to the same 1987 9th Circuit case; and one to a Wikipedia page about
 17 the Modesto ULC. *Id.* Notably, the three court decisions to which AMM links all were issued
 18 before ULC Monastery’s formation in 2006. *Id.*

19 It is undisputed in this action that the statements AMM makes are not true with respect to
 20 ULC Monastery (e.g. never had its “IRS non-profit status revoked,” never been “embroiled in
 21 fraud allegations”; and never “been in and out of bankruptcy,”). There is no dispute that the
 22 Modesto ULC is separate and distinct entity from ULC Monastery; AMM admitted as much. *See*
 23 *May 3 Galletch Decl.*, Ex. 8 (dep pg. 21:12-16).

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1 2. The AMM Legal Website

2 This website makes a series of misleading and false statements. It starts with the assertion
 3 AMM is a “IRS 501c3 certified ministry,” located under and a part of the seal of the US Treasury.
 4 *May 3 Galletch Decl., Ex. 7 at pg. 1.* There is no provision in the Internal Revenue Code
 5 authorizing the IRS to certify any organization as a “non-profit ministry,” and AMM admitted it
 6 received no such certification. *May 3 Galletch Decl., Ex. 2 (dep pgs. 49:3-51:19).*

7 As a second example, AMM then falsely asserts ULC Monastery has “made millions of
 8 dollars selling ordinations”:

9 **There are people who have made millions of dollars selling ordinations, and
 10 our free online ordinations are making it more difficult for them to take your
 11 money.** They are behind that anonymous, and misleading website that incorrectly
 12 states that weddings “may not be legally valid.”

13 *May 3 Galletch Decl, Ex. 7, pg. 1* (bold and coloring in original). AMM admitted this is direct
 14 reference to ULC Monastery as the “people who have made millions of dollars selling
 15 ordinations.” *May 3 Galletch Decl., Ex. 2 (dep. pgs. 296:13-299:8) and Ex 3 (dep. pg. 69:7-20).*
 16 The reference to ULC Monastery is also made in the opening paragraph and in the body (¶2-3 on
 17 pg. 2), where AMM refers to the website “americanmarriageministries.com,” on which ULC
 18 Monastery publishes content. *Ex. 7.* It is undisputed ULC Monastery has never sold a single
 19 ordination and never made a single dollar—let alone “millions of dollars”—by selling ordinations.
 20 To the contrary, ULC Monastery has always provided ordination free of charge. *ECR 116, ¶4.*

21 **C. AMM And Maurice King Had Specific Knowledge The Content Was False**

22 As noted above, Maurice King, Dylan Wall, and Glen Yoshioka all worked for ULC
 23 Monastery in its early stages. They all were intimately familiar that ULC Monastery was started
 24 to separate from both the Modesto ULC and the Arizona entity, and to pave a path distinct from
 25 both Modesto and Arizona. Mr. King had a direct hand in content published by ULC Monastery.

26 See *May 3 Freeman Decl. filed concurrently, ¶6-8.*

1 ULC Monastery held a staff meeting most days over a “working lunch” the organization
 2 provided. *May 3 Galletch Decl., Ex. 1* (dep. pgs. 79:16-18); and *May 3 Freeman Decl.*, ¶5-7.
 3 During and outside of those lunch meetings, Mr. Freeman was open about the history and
 4 disconnection from both Mr. Zimmerman and the Modesto ULC. *Id.* Maurice King attended these
 5 working lunches, at which the group would discuss how ULC Monastery wanted to do things and
 6 creating its own path different from the Modesto ULC, and content for its websites. *Id.*

7 In one email specifically, Mr. Freeman stated to Maurice King and other staff that it “chose
 8 not to pay or be associated with Modesto.” *May 3 Galletch Decl., Ex. 9*. In addition, in a blog post
 9 forwarded to staff, including Mr. King, Mr. Freeman stated that “no such affiliation exists”
 10 between ULC Monastery and the Modesto ULC. *Id., Ex. 10*. A third email included an email from
 11 the Modesto ULC stated emphatically that ULC Monastery is “a separate organization that is NOT
 12 AFFILIATED WITH US.” *Id., Ex. 11* (*caps in original*). AMM possessed a copy of this emphatic
 13 statement by Modesto ULC. *Id., Ex. 12*.

14 In approximately 2008, ULC Monastery created and published a website with information
 15 demonstrating its distinction from the Modesto ULC, having the domain www.universal-life-
 16 church.com. *May 3 Freeman Decl.*, ¶6-8. The heading of the main, initial webpage became “The
 17 Real Universal Life Church.” The content, as posted during Mr. King’s tenure and today, states
 18 that ULC Monastery is a Washington non-profit entity, operates independent of the Modesto ULC,
 19 and is “untainted” by the legal challenges the Modesto ULC encountered. *Id., and see webpage*
 20 *at The Monastery << The Real Universal Life Church (universal-life-church.com)*.

21 The daily staff meetings attended by Mr. King included specific discussion about the
 22 content on this site. *May 3 Freeman Decl.*, ¶6-8. Mr. King was a party to those discussions and
 23 participated in the creation and publishing of that content. website. *Id.; and May 3 Galletch Decl.*
 24 *Ex. 13* (dep. pgs. 15:23-17:7).

D. AMM's Admitted Maurice King Reviewed and Approved The Content On AMM's Offending Websites

In discovery, ULC Monastery asked AMM to identify those that wrote, or helped write, or authorized, directed, approved of, voted for, or consented to the publishing of AMM two offending websites. *See May 3 Galletch Decl., Ex. 14.* AMM’s supplemented response was thus:

The following individuals were involved in preparing, reviewing, and/or approving the content of amm-vs-ulc.com in various capacities: Dylan Wall, Glen Yoshioka, Maurice King, and Lewis King. Lewis King, Glen Yoshioka, and Dylan Wall collectively wrote the copy for the website. Maurice King reviewed a draft of the website copy. Lewis King approved the final version of the website copy and authorized and directed its publication.

Id., pgs. 2-3 (Rogs 3-4).

ULC Monastery then sought to depose AMM under Rule 30(b)(6), noting as specific topics the identity of each individual involved with the two offending websites, and the nature of each's involvement. *May 3 Galletch Decl.*, ¶17 and Ex. 15 (pg. 2, topics 2-3). AMM's first designee testified Maurice King wrote some of the text for the AMM Legal Website. *May 3 Galletch Decl.*, Ex. 3 (dep. pgs. 81:5-84:25). AMM's second designee (Mr. Lewis King) testified that Maurice King saw, gave "approval" of, and consented to the AMM Legal Website. *ECR 204-2*, pg. 6 (dep., pgs. 107:5-109:24) and pg. 3 (dep. pgs. 107:5-109:24). As to the AMM-vs.-ULC Website, AMM testified Maurice King at least reviewed it, but could not recall if approved it. *Id.*, *ECR 204-2*, pg. 8 (dep. pgs. 128:4-129:4). In asking what Maurice King did, AMM's 30(b)(6) designee testified it was "somewhat confusing." *May 3 Galletch Decl.*, Ex. 2 (dep. pgs. 296:13-299:8).

It is not surprising AMM could not provide more specific details about Maurice King's actual involvement, because AMM chose not to prepare its designees for deposition. AMM's two designees admitted under oath that they did little to nothing to prepare. One designee testified he did nothing, other than read the notice of deposition. *May 3 Galletch Decl., Ex. 3 (dep. pgs. 9:20-10:7)*. The second stated he had a phone call with AMM's attorneys and "skimmed the document

sent out a couple days before this proceeding" (apparently referring to the notice of dep). *See May 3 Galletch Decl., Ex. 2 (dep. pgs. 6:24-7:25).*

ULC Monastery inquired if any board meetings were held and if anyone at AMM looked through Board meeting minutes. AMM answered, “I don’t know.” *Id.*, Ex. 2 (dep. pgs. 106:9-107:4). ULC Monastery also asked AMM if it searched for prior versions or drafts of the offending websites, as that would indicate, among other things, who contributed to the content. AMM responded, “No” and “I don’t know.” *Id.* (dep pgs. 130:16-14). This was a specific topic identified in ULC Monastery’s Rule 30(b)(6) notice. *See May 3 Galletch Decl., Ex. 15 (pg. 7, topic 50).*¹

III. LEGAL AUTHORITY AND ARGUMENT

A. Summary Judgment Standard

Under Fed.R.Civ.P. 56(a), summary judgment is not warranted if a material fact exists for trial. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995). Mr. King, as the moving party, bears the initial burden to demonstrate the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If and as Mr. King meets that burden, then ULC Monastery, as the responding party, must identify specific facts showing there is a genuine issue of material fact. *See Anderson v. Liberty Lobby*, 477 U.S. 242, 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). For purposes of summary judgment, a fact is “material” if it might affect the outcome of the suit under the governing law. *Anderson, supra*, 477 U.S. at 248. In ruling on a summary judgment motion, a court must construe the facts, as well as all rational inferences therefrom, in the light most favorable to ULC Monastery as the non-moving party. *Scott v. Harris*, 550 U.S. 372, 378, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007).

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¹ AMM's Motion for a Protective Order based on AMM's objections to ULC Monastery's list of 30(b)(6) deposition topics was denied, with fees awarded to ULC Monastery. *See Dkt. No. 129.*

B. Standards of Personal Liability

ULC Monastery asserted three causes of action arising from AMM's two offending websites: violation of the Lanham Act, violation of the Washington Consumer Protection Act, Chapter 19.86 RCW (the "CPA"), and defamation per se. *ECR* #27. For each, the legal standards for personal liability have been framed differently by the courts, although the standards generally center on the same concept: either knowledge and approval of, or actual participation in, the violative conduct.

1. The Lanham Act

AMM cites to unpublished decisions from a different district. *See ECR 202, pg. 5:17-23.* The law as stated by the Ninth Circuit is that personal liability attaches to one who “authorizes or directs” the violative conduct. *Committee for Idaho’s High Desert v. Yost*, 92 F.3d 814, 823 (9th Cir. 1996); *Coastal Abstract Serv. v. First Am. Title Ins. Co.*, 173 F.3d 725, 734 (9th Cir. 1999) (“authorizes or directs in which he participates”); and *Suarez Corp. Indus. v. Earthwise Techs.*, 636 F.Supp.2d 1139, 1149 (W.D. Wash. 2008).

A director or “officer who directs, controls, ratifies, participates in, or is the moving force behind the infringing activity,” is personally liable. *OTR Wheel Eng’g v. West Worldwide Svcs.*, no. 2:14-CV-00085-LRS, 2014 WL 11514767, at *3 (E.D. Wash Aug. 1, 2014), citing, *inter alia*, Restatement (Third) of Agency §7.01 *cmt. d* (“If an organizational officer participates in wrongful conduct, the officer is subject to liability...”).

2. Washington CPA

A corporate officer or director is liable when s/he either (a) participates in wrongful conduct or (b) with knowledge approves of the conduct. *State v. Ralph Williams*, 87 Wash.2d 298, 322, 553 P.2d 423, 429 (1976) (individual owner liable for violations of the CPA); and *Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wash.2d 745, 752, 489 P.2d 923, 927 (1971).

1 Mr. King relies on the decision in *Parkinson v. Freedom Fid. Mgmt.*, no-CV-0345-TOR,
 2 2012 WL 1931233 (E.D. Wash. May 29, 2012). *Parkinson*, first, is the Eastern District's reading
 3 of Washington law, and is not the pronouncement of Washington state courts. Second, the facts
 4 and ruling in *Parkinson* are distinguishable, but the decision still nonetheless supports ULC
 5 Monastery.

6 In *Parkinson*, a collection company violated the CPA by charging fees in excess of the
 7 statutorily permitted amounts. 2012 WL 1931233, at *1. The violations started years prior, and
 8 the plaintiffs sought to hold liable the new purchasers of the company. *Id.*, at *3. The court found
 9 the new owners liable were not liable for two main reasons. First, while the new owners were, or
 10 should have been, aware of the violations, their participation was minimal because they inherited
 11 the unfair practice and oversaw it for only two months. *Id.*, at *4 and *13 (“they did not
 12 ‘participate in’ or ‘approve of’ the corporate conduct to such a degree that imposing personal
 13 liability would be appropriate”). Second, the violative conduct was an “unfair” and not a
 14 “deceptive” practice under the CPA. *Id.*, at *12. The Court found that Washington state court
 15 decisions finding personal liability were based upon deceptive, not unfair, acts. *Id.*
 16

17 Unlike the “unfair” acts in *Parkinson*, ULC Monastery’s allegations are that AMM and
 18 Mr. King committed “deceptive” acts, e.g. publishing false and deliberately misleading content
 19 on the two websites that AMM admitted it aimed at ULC Monastery. Further, unlike the new
 20 owners in *Parkinson*, Mr. King has been a director and officer, and the general counsel, of AMM
 21 for years, and reviewed and approved the false and deceptive content, and helped write some of
 22 it. *See Section II.D, supra, pgs. 7:1-8:8.*

23 Moreover, the Washington Supreme Court has held that a director or officer is personally
 24 liable under the CPA even if she or he did not personally undertake the wrongful conduct.
 25 *Johnson, supra*, 79 Wash.2d at 752. In *Johnson*, one of the two owners (Mr. Peach) made a whole
 26

1 series of false representations and warranties. *Id.*, 79 Wash.2d at 751. The co-owner (Mr.
 2 Harrigan) argued since he did not make the false representations himself, he could not be liable
 3 for his co-owners' statements. *Id.* The Court rejected Mr. Harrigan's argument, holding that he is
 4 liable if he "sanctioned or approved" the actionable conduct, and the evidence showed that he, as
 5 an owner, set up the sales system that led to, and was also involved in, some of the
 6 misrepresentations, even if his role was lesser than his co-owner. *Id.*, 79 Wash.2d at 752.

7 **3. Common Law Tort for Defamation Per Se**

8 Defamation per se is a tort. *Mohr v Grant*, 153 Wash.2d 812, 823, 108 P.3d 768, 774
 9 (2005). In general, defamation per se is a provably false statement, which the defendant either
 10 knew was false or acted with reckless disregard for the truth or falsity, and which injures the
 11 plaintiff in its profession, trade, or business. *See, e.g., Valdez-Zontek v. Eastmont School Dist.*,
 12 154 Wash.App. 147, 165-166, 225 P.3d 339, 349 (2010); and *Life Designs Ranch v. Sommer*, 191
 13 Wash.App. 320, 328-329, 364 P.3d 129, 134 (2015). ULC Monastery, as the claimant, "need not
 14 prove loss of income or special damages to recover." *Life Designs, supra*, 191 Wash.App. at 341
 15 (opinion dissenting in part, concurring in part); and *Waechter v. Carnation Co.*, 5 Wash.App 121,
 16 128, 485 P.2d 1000, 1004-1005 (1971) (damage award without proof of actual damages).

17 Mr. King initially cites to opinions of federal courts, however as defamation per se is a
 18 Washington state claim, substantive law of Washington applies. *See, e.g., Love v. Associated*
 19 *Newspapers*, 611 F.3d 601, 610 (9th Cir. 2010). Under Washington law, individuals are liable for
 20 their own torts. *See, e.g., Johnson, supra*, 79 Wash.2d at 752. An officer or director of an entity
 21 is personally liable if that officer or director "knowingly participated in, cooperated in the doing
 22 of, or directed that the acts be done." *Id.*, 79 Wash.2d at 753; and see *Deep Water Brewing, LLC*
 23 *v. Fairway Resources*, 152 Wash.App. 229, 262-263, 215 P.3d 990 (2009) ("To avoid personal
 24 liability, the corporate officer must have acted in good faith").

C. Maurice King Reviewed and Approved, and Participated in, The Creation and Publication Of AMM's Offending Websites

In the instant action, AMM and Mr. King's co-Board members admitted Mr. King reviewed and approved the websites, without making any objection of note, and he helped write at least part of one. That Mr. King reviewed and approved the sites is material in part because Mr. King is a "Governing Person" under Washington law. Board members of a non-profit control and manage the entity, and set and implement the policies. *See, e.g.*, Rev. Code of WA 24.03.095 (affairs of non-profit corporation managed by board of directors). This includes authorizing and approving of the offending websites. A corporation can act only through its agents. *See, e.g.*, *Frigidaire Sales Corp. v. Union Properties*, 88 Wash.2d 400, 405, 562 P.2d 244 (1977).

This is similar to the defendants in *Johnson, supra*, 79 Wash.2d 745, *Ralph Williams, supra*, 87 Wash.2d 298, and *Transgo v. Ajac Transmission Parts Corp.*, 768 F.2d 1001 (9th Cir. 1985), where the courts found personal liability in part because the individuals were in charge and control of the entities, and set up the systems that fostered the violative conduct. More so than the defendants in those cases, Mr. King is also the general counsel of AMM.

Moreover, Mr. King was in a unique position that made him specifically cognizant that AMM's offending content was in fact false and deceptive. Of all people in the world, Mr. King was one of the few who knew best that ULC Monastery and the Modesto ULC were separate entities, that ULC Monastery was founded to break with the old Modesto ULC, and that ULC Monastery has publicly sought to distinguish itself from the old Modesto ULC. Mr. King was an initial employee, director, and officer of ULC Monastery. He was present in the daily lunch meetings which discussed the organization's business and web content, including the content created and published on the www.universal-life-church.com website. Without credible question, he had full knowledge that ULC Monastery was formed specifically to separate from both the Modesto ULC and the Arizona entity; that ULC Monastery "chose not to...be associated with

1 Modesto" (Ex. 9 to May 3 Galletch Decl.) and that the Modesto ULC was emphatic that it had
 2 "no affiliation" with ULC Monastery (Ex. 10 to May 3 Galletch Decl.).

3 As an attorney and as general counsel for AMM, Mr. King certainly was fully aware that
 4 the court decisions AMM connected to ULC Monastery were (i) issued decades before ULC
 5 Monastery was even formed, and (ii) involved the separate and distinct Modesto ULC. Thus,
 6 AMM's Executive Director testified that if Mr. King did have an objection, such objection
 7 "absolutely meant something" and would have been heeded. *May 3 Galletch Decl.*, Ex. 2 (dep.
 8 pgs. 110:24-111:23). Despite all this, Mr. King reviewed AMM's content falsely and deceptively
 9 attributing the Modesto ULC's out-dated troubles to ULC Monastery, and approved publication.
 10 Thus, Mr. King was not a merely a passive board member, but one of the few people best
 11 positioned to avoid publication of the false and deceptive statements at issue. It is therefore both
 12 reasonable and warranted under the law to hold him liable for knowingly approving the
 13 publication of such false statements.
 14

15 **D. There is No Basis For Sanctions**

16 ULC Monastery agrees a court has the inherent authority to control and sanction attorneys
 17 and parties that appear before it. That authority is "to be exercised with great caution" and "with
 18 restraint and discretion." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 42 and 43, 111 S.Ct. 2123, 115
 19 L.Ed.2d 27 (1991). With respect to an award of attorneys' fees under the Court's inherent authority
 20 to punish, which Mr. King requests, an award is to be made when "fraud has been practiced upon"
 21 the court "or that the very temple of justice has been defiled." *Id.*, 501 U.S. at 46 (identifying three
 22 narrow and specific bases for courts to award fees as part of its inherent authority, as exception to
 23 the American rule that each side bear its own attorneys' fees).

24 In the instant action, there is neither fraud nor defiling of the temple of justice. Mr. King
 25 does not even allege any. On this basis alone, his request fails. Mr. King cited to *Chambers, supra*.
 26

1 There, the defendant Chambers engaged in a years long effort both inside and outside the court of
 2 consisting of fraud, creation of a sham trust to divest the court of jurisdiction, filing false and
 3 frivolous pleadings, filing appeals without basis or merit, and a conscious effort to delay and harass
 4 the plaintiff to drive up litigation expenses. 501 U.S. 32, 36-42. With such a clear record of
 5 repeated and consistent abuse of the Court's process, sanctions were warranted. This is quite
 6 disparate from ULC Monastery in the instant action, which has simply pursued claims against Mr.
 7 King because the evidence supports that Mr. King knowingly and consciously approved the
 8 publication of content that he – of all people in the world – knew best was false and deceptive.
 9

10 Still, there is no basis for fees simply because a defendant contends the evidence is
 11 insufficient against him, or contends the claimant conducted too little discovery. That would lead
 12 to absurd results, forcing a party to engage in expensive discovery just to construct a record to
 13 guard against a potential adverse award of attorneys' fees.

14 Sanctions are further not warranted where Mr. King's motion makes inaccurate and
 15 misleading statements. Mr. King motion claimed "there is simply no evidence he drafted or
 16 actually approved the content." *ECR 202, pg. 8:2*. This is incorrect. AMM testified he did in fact
 17 review and approve, and helped write the content. Mr. King also claimed ULC Monastery
 18 "admitted...that Mr. King would have had to personally take purposeful action" in order to be
 19 liable, citing to a prior memorandum of ULC Monastery. *ECR 202, pg. 5:12-15*. ULC Monastery
 20 made no such statement, and the word "purposeful" is not present in the memorandum cited by
 21 Mr. King. *See ECR 17*.

22 IV. CONCLUSION

23 For the reasons set forth above, ULC Monastery respectfully requests that the Court deny
 24 Mr. Maurice King's motion for summary judgment. His involvement went beyond passive
 25 awareness, but direct review and approval as one in direct charge and control of AMM, as its
 26

1 director, officer, and general counsel, and given his direct knowledge of the distinction between
2 ULC Monastery and the Modesto ULC.

3

4 DATED this 3rd day of May 2021.

5

6 By: *s/ Michael P. Matesky, II*
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8 Matesky Law PLLC
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11 Attorneys for Plaintiff Universal Life Church Monastery Storehouse

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